CONSTITUTIONAL LAW — SEPARATION OF POWERS — CONSTITUTIONALITY OF INDETERMINATE SENTENCE ACTS. — The defendant was convicted under a statute providing that for certain crimes the court should not sentence the prisoner to a definite term, but that he should serve not less than one year, nor more than the maximum penalty for that crime. A board of pardons was empowered to advise the governor to pardon the prisoner at any time after the minimum term had been served. *Held*, that this statute is constitutional. *People* v. *Joyce*, 92 N. E. 607 (Ill.).

It is urged against the constitutionality of such statutes that they interfere with the powers of the judiciary by depriving the courts of the right to fix the exact punishment, and conferring this right on a board which is not judicial. *People* v. *Cummings*, 88 Mich. 249; *In re Conditional Discharge of Convicts*, 73 Vt. 414. But the legislature may set an exact penalty for any crime, and here it has set the maximum period, for which the courts are to sentence the defendant. *People ex rel. Clark* v. *The Warden of Sing Sing Prison*, 39 N. Y. Misc. 113; *State* v. *Duff*, 122 N. W. 829 (Ia.). The board is merely an agency empowered to pardon the prisoner at an earlier date, a privilege always allowed to some body other than the courts. As the governor is free to refuse a pardon, or to pardon on his own initiative, his constitutional rights are not infringed. *Rich* v. *Chamberlain*, 104 Mich. 436. *Cf. State ex rel. Bishop* v. *State Board of Corrections*, 16 Utah, 478. The great objection to these statutes is that the court which tried the case is better prepared to exercise clemency, if that is desirable, than a board dependent mainly on hearsay evidence. *People* v. *Cummings*, *supra*. But this is an argument to be addressed to the legislature. By the decided weight of authority such statutes are held to be constitutional. *George* v. *People*, 167 Ill. 447; *Miller* v. *State*, 149 Ind. 607.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — FEDERAL POWERS OF STATE "LEGISLATURE." — The constitution of South Dakota, Art. III, § 1, provided that five per cent of the voters could "require that any laws which the legislature may have enacted shall be submitted to a vote of the electors . . . before going into effect." The state legislature passed a statute establishing Congressional districts. A referendum petition was filed as to that act. The relator sought to have his nomination papers filed under the act. *Held*, that he is not entitled to do so since the act is not in force. *State ex rel. Schrader* v. *Polley*, 127 N. W. 848 (S. D.). See NOTES, p. 220.

CORPORATIONS — NATURE OF CORPORATION — LICENSE TO ASSIGN LEASE TO A "RESPECTABLE AND RESPONSIBLE PERSON." — A lease of a livery stable contained a covenant not to assign without the lessor's consent; but such consent was not to be withheld in respect of "a respectable and responsible person." Permission to assign to a corporation was asked and refused; but the assignment was made. In an action brought by the lessor to have the lease declared forfeited, the question was whether a corporation could be within the description in the lease. *Held*, that a corporation may be "a respectable and responsible person." *Willmott* v. *London Road Car Co.*, 45 L. J. 666 (Eng., Ct. App., Oct. 13, 1910).

In legal meaning, the term "person" usually embraces corporations. As used in the Fourteenth Amendment it is so construed. See *Pembina Consolidated Silver Mining and Milling Co.* v. *Pennsylvania*, 125 U. S. 181. Unless a contrary intention on the part of the legislature appears, statutes receive this construction. See *Pharmaceutical Society* v. *London and Provincial Supply Association*, 5 App. Cas. 857, 869. So in a will a power to lease "to any person" covers a letting to a corporation. *In re Jeffcock's Trusts*, 51 L. J. Ch. 507. The question then becomes whether a corporation may be described as "respectable." The adjective invariably derives significance from the context. The

lease here demands a respectable liveryman — that is, one who carries on the trade in a respectable manner. Obviously a corporation may do so. A corporation has been held to have a "trading character," a "reputation in the way of its business," for a libel upon which it may recover. *South Hetton Coal Company* v. *North-Eastern News Association*, [1894] 1 Q. B. 133. Also a corporation may be "responsible," that is, financially sound; in this case, able to pay the rental. The decision is clearly correct and, in view of the constantly increasing use of the corporate form, in thorough accord with modern business conditions.

CORPORATIONS — STOCKHOLDERS: INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS — WHAT LAW GOVERNS. — A California statute provided that the stockholders in a domestic corporation or in a foreign corporation doing business within the state shall be liable, in certain proportions, for the corporate debts. An Arizona statute provided that a corporation formed under its laws may exempt the private property of its members from liability for corporate debts. The defendant was a stockholder in a corporation formed in Arizona to do part of its business in California, and whose articles of incorporation expressly exempted the private property of its members from liability for corporate debts. The corporation did business in California, and became insolvent. *Held*, that the defendant is liable for his proportionate share of the debts of the corporation, according to the law of California. *Thomas* v. *Wentworth Hotel Co.*, 110 Pac. 942 (Cal.).

The liability of stockholders is contractual, and therefore depends on the law of the place of incorporation. *Young* v. *Farwell*, 139 Ill. 326; *Tompkins* v. *Blakey*, 70 N. H. 584. See BEALE, FOREIGN CORPORATIONS, § 442. Statutes fixing the liability of stockholders are to be understood as not applying to foreign corporations unless that is their clearly expressed intent. See MORAWETZ, PRIVATE CORPORATIONS, § 874. But it is submitted that a state has no power to increase the liability of stockholders in a foreign corporation except by reincorporating it. *Risdon Iron & Locomotive Works* v. *Furness*, 21 T. L. R. 179. The principal case carries to an extreme the doctrine announced in a decision of the Supreme Court of the United States, in which it was held that since the corporation was formed to do business in California, and the articles of incorporation contained no express declaration as to the liability of stockholders, the incorporators must be presumed to have intended that their liability should be governed by the law of California. *Pinney* v. *Nelson*, 183 U. S. 144. For a criticism of that decision and a more complete discussion of the subject, see 18 HARV. L. REV. 452.

COVENANTS OF TITLE — COVENANTS AGAINST INCUMBRANCES — EASEMENTS. — In a deed of land given by the defendant to the plaintiff, the covenants of warranty were so worded that they might be taken, under the Florida statutes, to include a covenant against incumbrances. At the time of the sale a railroad maintained an open and notorious right of way across the land. The plaintiff sought to recover for breach of the covenant. *Held*, that he cannot recover. *Van Ness* v. *Royal Phosphate Co.*, 53 So. 381 (Fla.).

In addition to mortgages and other burdens upon the title, a covenant against incumbrances of course embraces easements. *Memmert* v. *McKeen*, 112 Pa. St. 315. But to determine what easements are included in the covenant, the courts have rightly looked in each case to the intention of the parties, and have not felt bound to give the written words their literal meaning, which would cover every sort of incumbrance. No case has been found which has held the presence of a public sidewalk to be a breach of the covenant. In drawing the line the courts have adopted various criteria. Some courts have felt that the words of the parties should be strictly construed. *Barlow* v.